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REDACTED – FOR PUBLIC INSPECTION

May 3, 2018

VIA ECFS

Marlene Dortch, Secretary
Office of the Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

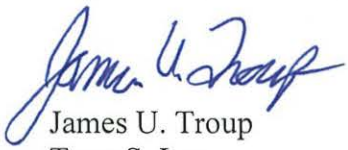
Re: ***In re Iowa Network Access Division Tariff F.C.C. No. 1***
WC Docket No. 18-60; Transmittal No. 36

Dear Ms. Dortch:

On behalf of Iowa Network Services, Inc. d/b/a Aureon Network Services ("Aureon"), transmitted herewith for filing in the above-referenced proceeding is a copy of the Public version of Aureon's Direct Case. On March 26, 2018, the FCC entered a Protective Order covering confidential materials submitted in this proceeding. Pursuant to the terms of the Protective Order, Aureon has designated certain information in its filing as Confidential, and all confidential information has been redacted in this filing. A Confidential version of the foregoing filing is being submitted contemporaneously via the Secretary's Office as required by the Protective Order.

Should there be any questions with respect to this submission, please contact the undersigned.

Respectfully submitted,



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d/b/a Aureon Network Services

REDACTED – FOR PUBLIC INSPECTION

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	WC Docket No. 18-60
	)	
Iowa Network Access Division Tariff	)	Transmittal No. 36
F.C.C. No. 1	)	

DIRECT CASE OF IOWA NETWORK ACCESS DIVISION D/B/A AUREON NETWORK SERVICES

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Dated: May 3, 2018

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DIRECT CASE OF IOWA NETWORK ACCESS DIVISION D/B/A AUREON NETWORK SERVICES

Iowa Network Access Division d/b/a Aureon Network Services ("Aureon") hereby files its direct case in response to the April 19, 2018 Order Designating Issues for Investigation ("*Designation Order*") issued by the Federal Communications Commission ("FCC," or the "Commission").

I. INTRODUCTION

A. CEA Service is Critical to Rural Areas.

As the Commission is aware, Aureon's centralized equal access ("CEA") network enables smaller interexchange carriers ("IXCs") to route their traffic to a central location, avoid building expensive network facilities to connect directly to rural local exchange carriers ("LECs"), and compete effectively against AT&T. The CEA network also facilitates intraMTA calling in Iowa for wireless calls, which presents its own unique challenges as nearly the entire state of Iowa is encompassed in a single MTA. Aureon's network provides switching and transport service to IXCs, connecting them to the facilities of small, rural LECs that subtend Aureon's CEA network (the "subtending LECs"). Without the CEA network, many subtending LECs would be forced to bear burdensome network and facility construction costs, if they could even afford them at all, and there would likely not be a competitive choice of long distance carriers in Iowa.

Aureon has expended considerable time and capital to construct its network and IT systems to facilitate CEA service, and no other carrier, including CenturyLink, has a network with the

comparable breadth or depth of Aureon's network in rural areas. Moreover, CenturyLink does not provide similar services that Aureon does to IXCs seeking to connect to the subtending LECs. The discontinuance of CEA service by Aureon would negatively impact more than **[[BEGIN CONFIDENTIAL]]** [redacted] **[[END CONFIDENTIAL]]** rural customers in Iowa. Specifically, **[[BEGIN CONFIDENTIAL]]** [redacted] **[[END CONFIDENTIAL]]** customers would suffer the complete loss of long distance/toll calling service, and an additional **[[BEGIN CONFIDENTIAL]]** [redacted] **[[END CONFIDENTIAL]]** would also be negatively impacted by the loss of the CEA network. As the Commission noted in its 2013 *Rural Call Completion Order*,[1] rural call completion failures have significant and immediate public interest ramifications, causing rural businesses to lose customers, cutting families off from their relatives in rural areas, and creating potential for dangerous delays in public safety communications in rural areas.

The 206 subtending LECs serve **[[BEGIN CONFIDENTIAL]]** [redacted] **[[END CONFIDENTIAL]]** communities (rate centers), and over **[[BEGIN CONFIDENTIAL]]** [redacted] **[[END CONFIDENTIAL]]** customers. Over **[[BEGIN CONFIDENTIAL]]** [redacted] **[[END CONFIDENTIAL]]** of the subtending LECs have fewer than **[[BEGIN CONFIDENTIAL]]** [redacted] **[[END CONFIDENTIAL]]** customers, and approximately **[[BEGIN CONFIDENTIAL]]** [redacted] **[[END CONFIDENTIAL]]** have fewer than **[[BEGIN CONFIDENTIAL]]** [redacted] **[[END CONFIDENTIAL]]** customers. Based on Aureon's best available information, approximately **[[BEGIN CONFIDENTIAL]]** [redacted] **[[END CONFIDENTIAL]]** rural communities do not appear to have extended area service ("EAS") agreements with a neighboring rate center. EAS is a service that enables customers to make local

[1] *Rural Call Completion*, Report and Order and Further Notice of Proposed Rulemaking, 28 FCC Rcd. 16154, 16155, ¶ 1 (2013).

calls to other nearby communities without incurring additional toll charges. Without EAS, those **[[BEGIN CONFIDENTIAL]]** ■ **[[END CONFIDENTIAL]]** rural communities are rural "islands" whereby the only means of routing long distance calls to and from those areas is through the CEA network. There are approximately **[[BEGIN CONFIDENTIAL]]** ■ **[[END CONFIDENTIAL]]** communities in Iowa with EAS, but many of those communities are simply connected to other nearby rural communities, i.e., only local calls can be placed between EAS-connected communities. Those **[[BEGIN CONFIDENTIAL]]** ■ **[[END CONFIDENTIAL]]** communities that do have EAS may not have an EAS agreement with CenturyLink. Without an EAS agreement with CenturyLink, long distance calls would not be able to reach residents in those communities as there would not be interconnection trunks between the LECs and CenturyLink through which long distance calls could be routed. In total, over **[[BEGIN CONFIDENTIAL]]** ■ **[[END CONFIDENTIAL]]** Iowa customers in **[[BEGIN CONFIDENTIAL]]** ■ **[[END CONFIDENTIAL]]** rural communities would be adversely impacted if Aureon were to cease operations. The FCC must ensure that Aureon is able to charge IXCs at least a cost-supported rate not only to maintain its CEA operations, but also to upgrade its aging infrastructure and attract capital so that Aureon can continue its core mission of bringing a competitive choice of long distance carriers and advanced telecommunications services to rural customers in Iowa.

B. Consistent with Aureon's CLEC Status, the Commission Should Permit Aureon to Charge the Default Transitional Rate, or in the Alternative, its Cost-Supported Rate.

On May 30, 2014, Aureon filed a complaint against AT&T in New Jersey federal district court seeking to enforce Aureon's tariffs filed with state and federal regulatory authorities. Upon

AT&T's request, the Court referred AT&T's counterclaims to the FCC on October 14, 2015. The Commission ruled on some of the issues referred by the Court on November 8, 2017.[2]

As part of that ruling, the Commission ordered Aureon to file a revised tariff rate for interstate CEA service.[3] Effective March 1, 2018, Aureon reduced its interstate CEA tariff rate by 35.7% from $0.00896 to $0.00576. The revised tariff rate of $0.00576 is now being investigated in this proceeding.

The Commission also established a default transitional rate for Aureon's CEA service of $0.00819.[4] "Rule 51.905(b) caps interstate 'tariff rates [at] no higher than the default transitional rate," i.e., the interstate rates effective December 31, 2011."[5] The purpose of the default transitional rate is "to provide more certainty and predictability regarding revenues to enable carriers to invest in modern, IP networks."[6] The Commission required tariffs to contain the default transitional rates, while permitting carriers "to enter into negotiated agreements that differ from the default rates."[7] In order to provide "carriers with the benefit of any cost savings and efficiencies they can achieve," LECs are no longer required to recalculate their rates based on their revenue requirements and rate of return, but now can charge the default transitional rates and "retain revenues even if their switched access costs decline."[8]

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[2] *See generally AT&T Corp. v. Iowa Network Services, Inc.*, Memorandum Opinion and Order, 32 FCC Rcd. 9677 (2017) ("*Liability Order*").

[3] *Id.* at 9694, ¶ 35.

[4] *Id.* at 9689, ¶ 24.

[5] *Id.* at 9688, ¶ 23.

[6] *Connect America Fund, et al.*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd. 17663, 17669, ¶ 9 (2011) ("*Connect America Order*").

[7] *Id.* at 17939 ¶ 812, and 17945-46, ¶ 828.

[8] *Id.* at 17957-58, ¶ 851, and 17983-84, ¶ 900.

The Commission should permit Aureon to bill tariff rates equal to or less than its default transitional rate of $0.00819. The Commission has determined that the default transitional rate already "prevents . . . LECs from charging IXCs excessive rates for switched access."[9] Aureon's current tariff rate of $0.00576 is 29.6% less than its default transitional rate. The data provided below demonstrate that Aureon's current tariff rate of $0.00576 was calculated in full compliance with the Commission's rules and the maximum authorized rate of return. Furthermore, Aureon's nonregulated Network Division fully complied with the Commission's rules regulating transactions with affiliates.[10] The nonregulated lease rate that was used to allocate switching and transport costs to Aureon's Access Division did not recover more than the fully distributed costs associated with the nonregulated Network Division's facilities.[11] Therefore, $0.00576 is a just and reasonable rate for Aureon's CEA service.

Like all other LECs, Aureon needs predictable revenue recovery to ensure that Aureon can maintain and enhance its network and accelerate the availability of broadband service in rural Iowa. As the policy objectives for establishing the default transitional rate are the same for Aureon as they are for all other LECs, the Commission should not make Aureon the only LEC in the nation that must continually revise its tariff rates based on changes in its regulated revenue requirement and rate of return. As long as Aureon bills a CEA tariff rate that is equal to or less than the $0.00819 default transitional rate, Aureon should not be required to reduce its rates further. Like

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[9] *Technology Transitions, et al.*, Declaratory Ruling, Second Report and Order, and Order on Reconsideration, 31 FCC Rcd. 8283, 8292, ¶ 27 (2016) ("*Technology Transitions*").

[10] 47 C.F.R. §§ 32.27(c)(2) and 64.902.

[11] The lease rates of Aureon's nonregulated Network Division are not subject to rate regulation. While the Commission's rules do not require the nonregulated Network Division's rates to be supported by cost data, the Commission requested cost data in this proceeding associated with those nonregulated rates.

all LECs, Aureon should be allowed to retain the benefits of efficiencies and related cost savings needed to fuel rural broadband deployment.

Alternatively, should the Commission decide to preclude Aureon from charging its default transitional rate as described in the *Connect America Order*, the Commission should allow Aureon to charge a cost-supported rate that satisfies the "end result standard."[12] That legal standard requires the Commission to ensure that the cost-supported rate is "sufficient to assure confidence in the financial integrity of the enterprise, so as to maintain its credit and to attract capital," provide sufficient "revenue not only for operating expenses but also for the capital costs of the business," and include revenue for "service on the debt and dividends on the stock."[13] As part of the Commission's "end result" examination in this proceeding, the Commission must determine whether the $0.00576 tariff rate will provide sufficient revenue if AT&T continues to *refuse to* pay Aureon's tariff rates.

In considering the lawfulness of Aureon's tariff rate, "the Commission must factor overriding equitable considerations."[14] AT&T's self-help has already inflicted serious financial damage upon Aureon. AT&T has paid only a small percentage of Aureon's invoices since September, 2013, stopped paying anything at all after the Commission adopted the *Liability Order* on November 7, 2017,[15] and currently owes Aureon more than $70 million (not including late payment penalties). While Aureon removed uncollectible amounts from Aureon's revenue requirement when calculating the $0.00576 tariff rate, the Commission may need to add those

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[12] *Jersey Cent. Power & Light Co. v. Fed. Energy Reg. Comm'n*, 810 F.2d 1168, 1177-78 (D.C. Cir. 1987).

[13] *Id.* at 1176.

[14] *Virgin Islands Tel. Corp. v. FCC*, 989 F.2d 1231, 1240 (D.C. Cir. 1993).

[15] AT&T has paid its most recent April 2018 invoice for CEA service provided in March 2018.

amounts back into the revenue requirement to ensure a reasonable "end result," if AT&T intends to continue to refuse payment of the tariff rate. Without Commission action redressing AT&T's self-help, Aureon will be forced to shut-down the CEA network, causing the disconnection of hundreds of thousands of rural residents from the public switched telephone network.

Imposing a competitive local exchange carrier ("CLEC") rate benchmark that would require Aureon to charge less than the $0.00576 reasonable, cost supported rate would mandate an unjust and unreasonable rate, contrary to the Commission's ratemaking regulations in Parts 32, 36, 64, 65, and 69, and in violation of Sections 201(b), 204(a)(1), and 205(a) of the Communications Act. Regardless of the CLEC rate benchmark, a rate is not just and reasonable unless the rate "may reasonably be expected to maintain financial integrity, attract necessary capital, and fairly compensate investors for the risks they have assumed, and yet provide appropriate protection to the relevant public interests, both existing and foreseeable."[16] "A basic principle used to ensure that rates are 'just and reasonable' is that rates are determined on the basis of cost."[17] Therefore, "to the extent practical, telephone prices should be 'based upon the true cost characteristics of telephone company plant.'"[18] Further, the CLEC rate benchmark cannot displace the Commission's duty to "provide carriers with a fair opportunity to achieve their regulated rates of return over the long-term."[19]

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[16] *Jersey Cent. Power & Light Co.*, 810 F.2d at 1177.

[17] *MCI Telecomm. Corp. v. FCC*, 675 F.2d 408, 410 (D.C. Cir. 1982) (quoting 47 U.S.C. § 201(b)).

[18] *Nat'l Ass'n of Reg. Util. Comm'rs v. FCC*, 737 F.2d 1095, 1147 (D.C. Cir. 1984) (quoting *MTS and WATS Market Structure*, 93 F.C.C.2d 241, 251 (1983)).

[19] *Virgin Islands Tel. Corp.*, 989 F.2d at 1234. *See also AT&T v. FCC*, 836 F.2d 1386, 1389-90 (D.C. Cir. 1988) ("The rate of return the Commission prescribes must be sufficient to cover the cost of capital the carrier must raise to do business").

The Commission should find that the CLEC rate benchmark is incompatible with the rate of return regulation and the default transitional rate applicable to calculating Aureon's tariff rates, and if necessary, waive the application of Sections 51.911(c) and 61.26 of the Commission's rules to CEA service. There are several reasons why the CLEC rate benchmark should not be applied to CEA service. First, it is irrational to have two default transitional rates or two rate ceilings. The *Liability Order* established $0.00819 as Aureon's default transitional rate. The CLEC rate benchmark adds a second, redundant default transitional rate (i.e., the default transitional rate of the competing ILEC).[20] The *Liability Order*, however, held that the $0.00819 default transitional rate applies "notwithstanding" the CLEC rate benchmark.[21] The rate ceiling established by the $0.00819 default transitional rate would serve no purpose if the CLEC benchmark also acted as a rate ceiling.

Second, the Commission created the CLEC rate benchmark so that CLECs would not have to prepare cost studies to calculate their rates. "The benchmarking rule was designed as a tool to constrain competitive LECs' access rates to just and reasonable levels without the need for extensive, ongoing accounting oversight and detailed evaluation of competitive LECs' costs."[22] As Aureon, being a dominant carrier, is required by Section 61.38 of the Commission's rules to

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[20] "[C]ompetitive LECs will benchmark to the default rates of the incumbent LEC in the area they serve." *Connect America Order*, 26 FCC Rcd. at 17967, ¶ 866.

[21] *Liability Order*, 32 FCC Rcd. at 9690, ¶ 26 (quoting Section 51.905, the default transitional rate applies "notwithstanding any other provision of the Commission's rules" and "regardless of how a CLEC calculates its rates").

[22] *Connect America Order*, 26 FCC Rcd. at 17966, ¶ 866. *See also, Access Charge Reform, et al.*, First Report and Order, 12 FCC Rcd. 15982, 16153, ¶ 396 (1997) ("*Access Charge Reform First Report and Order*") ("we find it unnecessary to apply any of our Part 69 regulations to competitive LECs").

file cost studies to calculate its rates, there is no purpose in applying the CLEC benchmark to CEA service.

Third, the CLEC rate benchmark assumes that Aureon competes with an incumbent local exchange carrier ("ILEC") and that Aureon serves end users in that ILEC's service area. "We also find that it is prudent to permit CLECs to tariff the benchmark rate for their access services only in the markets where they have operations that are actually serving end-user customers."[23] The CLEC rate benchmark only applies to CLECs "in the area they serve."[24] The CLEC benchmark also assumes that Aureon can make up the revenue shortfall by charging end users. "Competitive LECs . . . may recover reduced intercarrier revenues through end-user charges."[25] The CLEC rate benchmark cannot apply to CEA service because Aureon does not serve end users in competition with any ILEC.

Fourth, as mentioned above, the CLEC rate benchmark cannot lawfully reduce Aureon's rate below the just and reasonable level established by cost studies that fully comply with the Commission's accounting rules and the maximum authorized rate of return.

For these reasons, the Commission should not apply the CLEC rate benchmark to CEA service, and if necessary, it should waive Sections 51.911(c) and 61.26, as the CLEC rate benchmark is incompatible with rate of return, cost based regulation and the rate ceiling already established by the default transitional rate.

Alternatively, should the Commission decide to apply the CLEC rate benchmark to CEA service, then it should only do so as a rate floor. When the Commission established rate

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[23] *Access Charge Reform, et al.*, Seventh Report and Order and Further Notice of Proposed Rulemaking, 16 FCC Rcd. 9923, 9947, ¶ 58 (2001) ("*CLEC Access Reform Order*").

[24] *Connect America Order*, 26 FCC Rcd. at 17967, ¶ 866.

[25] *Id.* at 17961, ¶ 852.

benchmarking for CLECs, it stated that a CLEC's access rates would be conclusively presumed to be just and reasonable if the rates were at or below the benchmark.[26] There would be no need for Aureon to perform cost studies to support its rates at or below the CLEC rate benchmark because CLEC rates at or below that level are, by Commission rule, "conclusively" presumed to be just and reasonable. As a dominant carrier, Aureon would still be required by Section 61.38 of the Commission's rules to perform cost studies to support a CEA tariff rate above the CLEC benchmark. A CEA tariff rate above the CLEC rate benchmark is lawful if it is cost-supported in compliance with the Commission's accounting rules and will result in earnings that do not exceed the maximum rate of return authorized by the Commission.

II. RESPONSES TO SPECIFIC ISSUES DESIGNATED FOR INVESTIGATION

In this section, Aureon provides specific responses to issues raised by and requests for information as set forth in the *Designation Order*.

A. Rate Benchmarking Issues

1. Aureon Meets the Definition of Rural CLEC and Qualifies for the Rural Exemption (*Designation Order*, ¶¶ 9-11)

As discussed earlier, the CLEC rate benchmark is incompatible with the rate of return regulation applicable to calculating Aureon's tariff rates for CEA service. Imposing the Commission's CLEC rate benchmarking rules on top of dominant carrier ratemaking regulations deviates irreconcilably from the Commission's stated purpose to "ensure, by the least intrusive means possible," the reasonableness of CLEC "access rates that were subject neither to negotiation *nor to regulation designed to ensure their reasonableness.*"[27] The Commission clearly had no intention to apply its CLEC rate benchmarking rules to dominant carriers such as Aureon that were

[26] *CLEC Access Reform Order*, 16 FCC Rcd. at 9938, ¶ 40.

[27] *Id.* at 9924-25, ¶ 2 (emphasis added).

already subject to the Commission's intricate ratemaking regulations, including Parts 32, 36, 64, 65, and 69, designed to ensure the reasonableness of rates. Rather, the Commission created the CLEC rate benchmark so that CLECs would not have to prepare and submit cost studies to calculate or justify their rates, i.e., the least intrusive means possible. "The benchmarking rule was designed as a tool to constrain competitive LECs' access rates to just and reasonable levels without the need for extensive, ongoing accounting oversight and detailed evaluation of competitive LECs' costs."[28] As Aureon is required to file cost studies to calculate its rates, applying the CLEC rate benchmark to its rates for CEA service on top of dominant carrier regulations strays far from the purpose of the rule.

Imposing the CLEC rate benchmark rules on Aureon,[29] as the Commission has done by asserting that Aureon is a CLEC,[30] wrongly assumes that Aureon's CEA service competes with an ILEC and ignores the fact that Aureon's CEA service does not "serve" any end users in any ILEC service area.[31] In creating the CLEC rate benchmarking rule, the Commission established an initial guiding principle that CLECs would be permitted to "tariff the benchmark rate for their access services only in the markets where they have operations that are actually serving end-user

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[28] *Connect America Order*, 26 FCC Rcd. at 17966, ¶ 866. *See also Access Charge Reform First Report and Order*, 12 FCC Rcd. at 16153, ¶ 396 ("we find it unnecessary to apply any of our Part 69 regulations to competitive LECs").

[29] The *Designation Order* asserts that Aureon is subject to Section 61.26(f) of the CLEC rate benchmarking rules. *Designation Order* at 4-5, ¶ 9.

[30] *Liability Order*, 32 FCC Rcd. at 9689, ¶ 25 (asserting that Aureon must be a CLEC for the purposes of the CLEC rate benchmarking rules because Aureon is not an ILEC). While Aureon disagrees with the Commission's conclusion, the analysis herein applies the CLEC rate benchmarking rules under the assumption that the conclusion is arguably correct.

[31] Applying the CLEC rate benchmark to Aureon also wrongly assumes that Aureon can make up the revenue shortfall by charging end users for CEA service. *Connect America Order*, 26 FCC Rcd. at 17961, ¶ 852 ("Competitive LECs . . . may recover reduced intercarrier revenues through end-user charges.").

customers[,]"[32] or "where they begin serving end users *after* the effective date of [the benchmarking] rules . . . to tariff rates only equivalent to those of the competing ILEC . . . ."[33] The CLEC rate benchmark should not apply to Aureon's CEA service because it does not compete with any ILEC to serve end users, its CEA service is not intended to serve any end users, and, as explained herein, the CLEC regulatory paradigm is generally incompatible with Aureon's status as a dominant carrier. Indeed, it is implicit from the issues raised in the *Designation Order* that attempting to apply the CLEC rate benchmark analysis to Aureon, as a provider of CEA service, reveals inconsistencies in the Commission's rules. Notwithstanding the forgoing, the Commission should find that, despite such inconsistencies, Aureon's proposed interstate CEA tariff rate is reasonable under any application of the CLEC rate benchmarking rules.

The Commission has held that Aureon meets the definition of a CLEC using the "ordinary, contemporary, common meaning" of the words in its regulations.[34] In the *Liability Order*, the Commission determined that Aureon, despite being a dominant carrier, was a CLEC under the Commission's non-dominant carrier rules because Section 51.903(a) states that a "competitive local exchange carrier is any local exchange carrier, as defined in [Section] 51.5, that is not an incumbent local exchange carrier."[35] As a result, the *Liability Order* asserted that, under a literal interpretation of the CLEC definition, the CLEC rate benchmarking rules apply to Aureon despite the fact that it is implicit, and arguably explicit, from the Commission's rules that the CLEC rate benchmarking rules are not intended to apply to dominant carriers. Specifically, the CLEC rate

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[32] *CLEC Access Reform Order*, 16 FCC Rcd. at 9947, ¶ 58 (emphasis added).

[33] *Id.* (emphasis added).

[34] *See Perrin v. United States*, 444 U.S. 37, 42 (1979) ("A fundamental canon of statutory construction is that, unless otherwise defined, words will be interpreted as taking their ordinary, contemporary, common meaning." (citation omitted)).

[35] *Liability Order*, 32 FCC Rcd. at 9689-90, ¶ 25.

benchmarking rules, found in Section 61.26, are contained in Part 61, Subpart C of the Commission's rules, captioned "General Rules for Nondominant Carriers" and Section 61.18 under Subpart C explicitly sets forth the scope of the subpart by stating that "[t]he rules in the subpart apply to all nondominant carriers."[36]

Consistent with the Commission's interpretation of its CLEC definition, Aureon should also meet the "ordinary, contemporary, common meaning" of a "rural CLEC" as defined in Section 61.26(a)(6) of the CLEC rate benchmarking rules. A "rural CLEC" is defined as "a CLEC that does not serve (i.e., terminate traffic to or originate traffic from) any end users located within [an urban area]."[37] Significantly, the rule defines the term "serve" as "terminate traffic to or originate traffic from" any end users, and qualification as a rural CLEC is conditioned on the negative, "does not serve." Aureon fits squarely within the definition of "rural CLEC" because its CEA service "does not serve (i.e., terminate traffic to or originate traffic from) any end users" in any area. There is no explicit requirement in the rule to affirmatively "serve" any end user in a rural area in order to be considered a rural CLEC.

The Commission directed Aureon to explain how the definition of "serve" applies to Aureon when it does not terminate traffic to or originate traffic from any end users at all, while asserting that "the rule implicitly assumes that the rural CLEC serves some end users in order to qualify for the rural exemption."[38] This supposed implied meaning contradicts the explicit text of

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[36] On the other hand, the more burdensome ratemaking and tariff filing requirements applicable to dominant carriers, such as Aureon, are found in Part 61, Subpart E, captioned "General Rules for Dominant Carriers." *See* 47 C.F.R. §§ 61.31-61.50.

[37] 47 C.F.R. § 61.26(a)(6) (emphasis added).

[38] *Designation Order* at 5, ¶ 11 ("the rural exemption is a narrow exception intended to encourage competition for end users in rural areas, which implies that the rural competitive LEC is a competitive LEC serving end users").

the rule: "does not serve . . . any end users . . . ."[39] The contradiction is corroborated by comparing other sections of the very same rule. Section 61.26(a)(1) defines CLEC in relation to a LEC that "provides . . . access services used to send traffic to or from an end user"[40] and Section 61.26(f), adopted to address CLECs acting as intermediate carriers (which would not have end user customers for the intermediate carrier services provided),[41] applies CLEC rate benchmarking in relation to a CLEC that "provides . . . access services used to send traffic to or from an end user *not served* by that CLEC[.]"[42] Two logical conclusions flow from this comparison. First, sending traffic to or from an end user via a subtending LEC does not equate to serving (terminating traffic to or originating traffic from) an end user. Thus, Aureon, as an intermediate carrier, can (and does) send traffic to or from an end user via subtending LECs without also serving that end user. Second, the Commission chose to define "rural CLEC" in the negative ("does not serve") rather than, as it did in other parts of the same rule section, with respect to an affirmative action (e.g., provides). In other words, the Commission deliberately chose not to define rural CLEC as CLECs that affirmatively serve end users only in rural areas or, for that matter, to include an affirmative obligation to serve any end user at all.[43] Because Aureon's CEA service does not serve any end user in urban areas, or, indeed, end users in any area, the Commission should find that Aureon meets the definition of a rural CLEC to the extent that it maintains its conclusion that Aureon is a CLEC at all.

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[39] 47 C.F.R. § 61.26(a)(6).

[40] *Id.* at § 61.26(a)(1) (emphasis added).

[41] *Access Charge Reform, et al.*, Eighth Report and Order and Fifth Order on Reconsideration, 19 FCC Rcd. 9108, 9116, ¶ 17 (2004) ("*CLEC Access Reform Reconsideration Order*").

[42] 47 C.F.R. § 61.26(f) (emphasis added).

[43] As the Commission explained, "[i]f a competitive LEC originates traffic from or terminates traffic to end-users located within [an urban area], the carrier is ineligible for the rural exemption to the benchmark rule." *CLEC Access Reform Reconsideration Order*, 19 FCC Rcd. at 9111, ¶ 6.

On a related matter, the Commission's assertion that its rationale for adopting the rural exemption was merely "a narrow exception intended to encourage competition for end users in rural areas," thus implying that a rural CLEC must serve end users to qualify, is misplaced.[44] The Commission's intent, and the benefits it sought to encourage, were not so limited. Indeed, the Commission recognized that the rural exception would further:

> the Commission's obligations [under the Act] to encourage the deployment to rural areas of the infrastructure necessary to support advanced telecommunications services and of the services themselves . . . [and] [g]iven the role that CLECs appear[ed] likely to play in bringing the benefits of new technologies to rural areas, [was] reluctant to limit unnecessarily their spread by restricting them to the access rates of nonrural ILECs.[45]

Accordingly, the Commission determined that the "record support[ed] the creation of a rural exemption to permit rural CLECs competing with non-rural ILECs to charge access rates above those charged by the competing ILEC."[46] Aureon furthers the goals of the rural exemption by building rural infrastructure necessary to support advanced telecommunications services and new technologies.

Not only does Aureon satisfy the textual definition of a rural CLEC, but the very purpose of the underlying rulemaking in which the rural exemption was adopted, i.e., to bring the benefits of new technologies and to encourage entry into rural markets, is the same impetus that led to Aureon's formation. Aureon was created specifically to encourage entry in rural markets by IXCs that compete against AT&T. Before Aureon's CEA network was built, AT&T was the monopoly provider of interstate long distance service in rural Iowa. Aureon's CEA service has made it

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[44] *Designation Order* at 5, ¶ 11.

[45] *CLEC Access Reform Order*, 16 FCC Rcd. at 9950, ¶ 65 (implying that the rural exception was not limited to CLECs providing "the [end user] services themselves" but, rather, extended to CLECs providing the necessary supporting infrastructure).

[46] *Id.* (emphasis added).

attractive for [[**BEGIN CONFIDENTIAL**]] [redacted] [[**END CONFIDENTIAL**]] IXCs to use the CEA network to originate traffic, and for [[**BEGIN CONFIDENTIAL**]] [redacted] [[**END CONFIDENTIAL**]] IXCs to use the CEA network to terminate traffic.[47] The Commission and the Iowa Utilities Board ("IUB") authorized CEA service to make advanced features and modern information services available in rural Iowa. The FCC authorized construction of the CEA network to "speed the availability of high quality varied competitive services to small towns and rural areas."[48] The Iowa Utilities Board approved Aureon's CEA network because "the concentration [of traffic] will benefit the general public in Iowa by assuring that a substantial portion of rural Iowa will have a network in place to deliver information services."[49] Aureon's CEA service not only meets the textual definition of "rural CLEC," but Aureon's existential purpose is entirely aligned with the Commission's basis for creating the rural exemption in the first place. Accordingly, if the Commission continues to treat Aureon as a "CLEC," it also should find that Aureon is a rural CLEC that is permitted to charge the NECA tariff rate pursuant to the rural exemption in Section 61.26(e) of the Commission's rules.

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[47] Declaration of Frank Hilton ¶ 2 ("Hilton Declaration"), attached hereto as Exhibit A.

[48] *Application of Iowa Network Access Division for Authority Pursuant to Section 214 of the Communications Act of 1934 and Section 63.01 of the Commission's Rules and Regulations to Lease Transmission Facilities to Provide Access Service to Interexchange Carriers in the State of Iowa*, Memorandum Opinion, Order and Certificate, 3 FCC Rcd. 1468, 1468, ¶ 4 (1988) ("*INS Section 214 Order*").

[49] *Iowa Network Access Division*, Order Granting Rehearing for the Limited Purpose of Modification and Clarification and Denying Intervention, Docket No. RPU-88-2, 1988 Iowa PUC Lexis 1, slip op. at 10 (IUB Dec. 7, 1988). The Iowa Supreme Court, in affirming approval of the CEA network, recognized that the provision of modern information services was an important objective of CEA service. *Nw. Bell Tel. Co. v. Iowa Utils. Bd.*, 477 N.W.2d 678, 681 (Iowa 1991) ("the network will also offer 'modern information systems'").

2. Aureon Does Not Indirectly Serve End Users for Purposes of the Rural Exemption (*Designation Order*, ¶ 11)

The Commission also asks Aureon to explain the consequences if the Commission found that Aureon indirectly served all of the end users of the LECs that subtend Aureon's tandem.[50] This question leads down an irrelevant path. As explained above, the Commission's own definition of "serve" in the context of Section 61.26 forecloses this notion. Under Section 61.26, to "serve" an end user is explicitly defined as to "terminate traffic to or originate traffic from" an end user.[51] CEA service does neither. Rather, CEA service is provided to other carriers, which precludes any finding that supposed "indirect" service to an end user is relevant to this definition. Specifically, Aureon receives traffic from IXCs and switches and transports that traffic from the IXCs to the subtending LECs. Those subtending LECs, in turn, terminate that traffic to end users. Aureon also receives traffic from subtending LECs (which originate that traffic from end users), and Aureon switches and transports that traffic to the IXCs. In both scenarios, none of the end users are served by Aureon. The end users are served by the LECs on either end of the call, rather than Aureon, who actually "terminate traffic to or originate traffic from" end users, and Aureon cannot be found to "serve" end users under the plain terms of the rural exemption..

Should the Commission ignore its own plain regulatory language and come to the discordant conclusion that Aureon indirectly serves all of the end users of the subtending LECs, it likely would follow that Aureon would not meet the definition of a rural CLEC in order to qualify

[50] *Designation Order* at 5, ¶ 11.

[51] *See* 47 C.F.R. § 61.26.

for the rural exemption.[52] As set forth in the Hilton Declaration,[53] the subtending LECs provide service to **[[BEGIN CONFIDENTIAL]]** ■ **[[END CONFIDENTIAL]]** rate centers, **[[BEGIN CONFIDENTIAL]]** ■ **[[END CONFIDENTIAL]]** of those rate centers are located in areas with more than 50,000 inhabitants, and approximately **[[BEGIN CONFIDENTIAL]]** ■ **[[END CONFIDENTIAL]]** subtending LECs serve end users located in those areas.[54] However, applying the "indirectly serves" logic means that Aureon also indirectly serves the end users of all of the LECs throughout the nation that route traffic, including through intermediate IXCs, to or from Aureon's CEA network. Moreover, all carriers would be deemed to indirectly serve the customers of all other carriers, and that expansive view would have serious, unintended consequences. The rural exemption in Section 61.26(e) would no longer apply to any carrier, rendering it completely meaningless and irrelevant, because all rural CLECs would be deemed to indirectly serve any end user from an urban area calling the rural CLECs' actual end users. The Commission should find it inappropriate to attribute "indirect" end users to a CLEC for purposes of the rural exemption, and because Aureon's CEA service does not serve any end users, Aureon should be considered a rural CLEC for purposes of the CLEC rate benchmarking rules to the extent that the FCC persists in its conclusion that Aureon is a CLEC at all.

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[52] However, the Commission has also acknowledged that "[t]o the extent that [certain carriers with non-rural operations who may choose to enter adjacent rural markets as a CLEC] provide the benefit of competition in rural markets, their non-qualifying incumbent operations should not operate entirely to deny them the benefit of the rural exemption." *CLEC Access Reform Order*, 16 FCC Rcd. at 9954-55, ¶ 77.

[53] Hilton Declaration ¶ 4.

[54] *Id.* Most of those LECs are CLECs rather than ILECs, however, and the traffic on Aureon's CEA network routed to those rate centers constitute a small fraction of Aureon's overall traffic – approximately 3% of total traffic volume. *Id.*

3. Should the Commission Apply the CLEC Rate Benchmark to CEA Service, the NECA Rates Would Be the Proper Benchmark (*Designation Order*, ¶¶ 12-13)

The NECA rates would be the benchmark for CEA service regardless of how the Commission applies the CLEC rate benchmark. The subtending LECs are the "competing ILECs" for the CLEC rate benchmark because they provide local service to the end users in the exchanges for which Aureon provisions CEA service. The rural exemption also applies the NECA rates as the benchmark because CenturyLink satisfies the definition of a "non-rural ILEC."

The term "competing ILEC" is specifically defined in Section 61.26(a)(2) to mean "the incumbent local exchange carrier, as defined in 47 U.S.C. 251(h), that would provide interstate exchange access services, in whole or in part, to the extent those services were not provided by the CLEC." The rule refers to Section 251(h) of the Communications Act of 1934, as amended (the "Act"), for the definition of "ILEC," which defines that term as follows: "with respect to an area, the local exchange carrier that – (A) on February 8, 1996, provided telephone exchange service in such area; and (B) [was a member of NECA on such date or later] "became a successor or assign of a member."[55] When read together, the definition represents that the competing ILEC must be the NECA member ILEC providing the end user "telephone exchange service" in the area where the CLEC provides interstate exchange access services. Thus, for all of the areas where Aureon provides its CEA service, CenturyLink cannot be the competing ILEC as defined because CenturyLink is not a NECA member and does not provide local service to end users in the exchanges of the CEA subtending ILECs. The Commission recognized in 2004 that:

[55] 47 U.S.C. § 251(h).

> AT&T correctly observes, there is only one "competing ILEC" and one "competing ILEC rate" for each particular end-user. Accordingly, competitive LECs serving an area with multiple incumbent LECs can qualify for the safe harbor by charging different rates for access to particular end-users based on the access rate that would have been charged by the incumbent LEC in whose service area that particular end-user resides.[56]

On the other hand, Section 61.26(a)(4)'s definition of the term "non-rural ILEC" and its usage in the rural exemption, Section 61.26(e), when read together, do not purport to create the same conditions. In this regard, CenturyLink can be the non-rural ILEC with respect to the rural exemption while not satisfying the definition of a "competing ILEC" in areas where Aureon transports traffic to another ILEC serving its own end user customers. Regardless of which approach under Section 61.26 is applied, whether the competing ILEC is the subtending LEC or the rural exemption applies (with CenturyLink as the non-rural ILEC), the end result is the same: Aureon's rate of $0.00576 would fall below the NECA rate benchmark.

If the rural exemption applies, then Aureon is permitted to benchmark to the NECA rate at the highest rate band. Even comparing Aureon's rate to the *lowest* rate band in NECA Tariff F.C.C. No. 5 using the most conservative approximation of average transport miles,[57] as illustrated in the chart below, Aureon's rate of $0.00576 is below that benchmark:

Table A[58]

NECA FCC Tariff #5: Per 1/1/2018 Tariff - Rate Band 1 (Low)

Tandem Switched Facility X Miles	$0.000204	100	$0.02040
Tandem Switched Terms X Terms	$0.001065	2	$0.00213
Tandem Switching	$0.002690		$0.00269
TOTAL			**$0.02522**

[56] *CLEC Access Reform Reconsideration Order*, 19 FCC Rcd. at 9131-32, ¶ 45 (footnotes omitted).

[57] *See infra* Section II.A.8.

[58] Declaration of Brian Sullivan ("Sullivan Declaration") ¶ 5, attached hereto as Exhibit D.

If the *highest* NECA rate band were used as permitted by Section 61.26(e), the differential between the NECA rate and Aureon's proposed rate would be even greater, i.e., Aureon's rate would fall even farther below the benchmark.

If the rural exemption does not apply, and the competing ILECs are the subtending ILECs on Aureon's network, then the only practical CLEC rate benchmark would be the NECA rates, as nearly all of Aureon's subtending ILECs participate in NECA's tariff.[59] Even recognizing that there may be differing competing ILEC rates to apply (e.g., NECA rates, other ILEC tariff rates, CenturyLink rates) does not alter the presumption of reasonableness that can be afforded to Aureon's rate of $0.00576. Significantly, as explained further below,[60] Aureon's rate would be considered reasonable even if it is benchmarked against CenturyLink's rates. Further, as the Commission has acknowledged, a CLEC serving areas with "multiple incumbent LECs can qualify for the safe harbor by charging different rates for access" depending on the rate that would have been charged by the corresponding ILEC.[61] The Commission also does not prohibit the application of a reasonable blended rate based upon the rates of multiple competing ILECs.[62] Thus, even accounting for different competing ILEC rates, any resulting blended benchmark rate would still be higher than Aureon's rate, and the blended benchmark rate would be higher than the rate prescribed in the access tariff of the price cap LEC with the lowest switched access rates in the state,[63] i.e., CenturyLink.[64] In other words, since most competing ILECs subtending Aureon's

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[59] *See infra* Section II.A.5.

[60] *See infra* Section II.A.8.

[61] *CLEC Access Reform Reconsideration Order*, 16 FCC Rcd. at 9131-32, ¶ 47.

[62] *Id.* at 9132, ¶ 48.

[63] *Liability Order*, 32 FCC Rcd. at 9687-88, ¶ 21.

[64] *See* 47 C.F.R. § 61.26(g). Assuming, hypothetically, that Aureon had to somehow account for some of its subtending CLECs at reduced rates due to the subtending CLECs' involvement with access stimulation, the resulting blended rate for Aureon would still be higher than CenturyLink's

network qualify for the NECA rate, which even at the lowest rate band is significantly higher than CenturyLink's rate, any blended average calculation would still yield a blended rate higher than CenturyLink's rate. As Aureon's current proposed rate of $0.00576 is already lower than CenturyLink's rates, as explained below, accounting for a blended benchmark rate average would not alter the presumption of reasonableness.

That said, the rates in NECA's tariff are the only practical benchmark for Aureon. Aureon does not currently track the rates of each subtending LEC, and its software is only designed to bill its IXC customers for CEA service at Aureon's filed rate.[65] It would be extremely expensive and burdensome for Aureon to acquire and implement the necessary infrastructure and software to track the rates for hundreds of subtending LECs, and then bill a different rate to IXCs depending upon the exchange where a call originates or terminates.[66] In any case, as explained herein, Aureon's rate of $0.00576 would be presumed reasonable under any application of the Commission's CLEC rate benchmarking rules.

4. Response Regarding Section 51.911(a)(2) (*Designation Order*, ¶ 13)

The Commission directed Aureon to address whether the NECA rate is higher than Aureon's rate of $0.00819 on December 29, 2011, and if so, why $0.00819 should not act as an absolute cap under Section 51.911(a)(2).[67] The calculated NECA rate, even at the lowest rate band, would be higher than Aureon's interstate rate of $0.00819 on December 29, 2011. However, Section 51.911(a)(2), discussing intrastate switched access rates, has no relevance in this

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rates because none of the rates making up the blended average would be lower than CenturyLink's rates. *See Designation Order* at 6, ¶ 14.

[65] Hilton Declaration ¶ 9.

[66] *Id.*

[67] *Designation Order* at 6, ¶ 12.

proceeding regarding Aureon's interstate tariff rates. Aureon fully complied with Section 51.911(a)(2) because Aureon never increased its intrastate rates above the intrastate tariff rates in effect on December 29, 2011.

5. Nearly All of Aureon's Subtending ILECs Participate in the NECA Tariff (*Designation Order*, ¶ 14)

The Commission asked Aureon "[h]ow many of Aureon's subtending LECs participate in the NECA tariff."[68] It is Aureon's understanding that nearly all of the ILECs subtending Aureon's network are participants in NECA Tariff F.C.C. No. 5. As shown in the Aureon-Member Carrier Census chart, attached hereto as Exhibit C,[69] approximately 128 ILECs participate in NECA. Of those, approximately 16 are in Rate Band 1 for TS Transport Rates and approximately 112 are in Rate Band 2. Approximately 15 rural ILECs participate in other tariffs.[70]

Aureon does not "partner" with its subtending LECs, and as the Commission acknowledged in its *Liability Order*, Aureon does not have revenue sharing agreements with its subtending LECs, or anyone for that matter.[71] As explained above,[72] the Commission has recognized that there can be only one competing ILEC: the ILEC which serves the area in which the relevant end user resides.[73] The competing ILEC "would provide interstate exchange access services, in whole or in part, to the extent those services were not provided by the CLEC."[74] The applicable competing ILECs would be those ILECs that subtend Aureon's network. It is the end

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[68] *Designation Order* at 6, ¶ 14.

[69] *See* Aureon-Member Carrier Census, attached hereto as Exhibit C.

[70] Sullivan Declaration ¶ 6.

[71] *Liability Order*, 32 FCC Rcd. at 9684-855, ¶¶ 17-18.

[72] *See supra* Section II.A.3.

[73] *CLEC Access Reform Reconsideration Order*, 19 FCC Rcd. at 9131-32, ¶ 45 (footnotes omitted).

[74] 47 C.F.R. § 61.26(a)(2).

offices of those ILECs to which Aureon sends traffic, and those ILECs would, in the hypothetical scenario contemplated by the definition, provide the switched access service to their end offices to the extent that such switched access service was not provided by Aureon. The subtending ILECs created Aureon to provide equal access, but would have upgraded their end offices to provide equal access if Aureon had never been formed.[75]

6. Aureon's Benchmark Rate Would Not Be Affected by Subtending LECs Engaged in Access Stimulation (*Designation Order*, ¶ 14)

The Commission directed Aureon to "explain how serving subtending LECs engaged in access stimulation affects Aureon's ability to benchmark to the NECA rate, to the extent that the tariffing status of Aureon's subtending LECs is relevant."[76] It is Aureon's understanding that the subtending LECS that are primarily responsible for access stimulation traffic are CLECs.[77] In that regard, the tariffing status of those CLECs is irrelevant to a determination of the reasonableness of Aureon's rates because, under the CLEC rate benchmarking rules, benchmarking is against the NECA rate (if the rural exemption applies) or the applicable competing ILEC rate, not against the tariff rates of another CLEC. Moreover, since the Commission has recognized that Aureon is not engaged in access stimulation,[78] Section 61.26(g) of the CLEC rate benchmarking rules, which apply to CLECs "engaging in access stimulation" would not apply to Aureon.[79] Despite the rule's inapplicability, Aureon's rates would still be presumed reasonable even if Aureon had to benchmark in accordance with Section 61.26(g), i.e., against CenturyLink as the price cap LEC

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[75] Hilton Declaration ¶ 3.

[76] *Designation Order* at 6, ¶ 14.

[77] Hilton Declaration ¶ 18.

[78] *Liability Order*, 32 FCC Rcd. at 9692-94, ¶¶ 31-34.

[79] 47 C.F.R. § 61.26(g)(1), (2).

with the lowest switched access rate in the state.[80] Section 61.26(g) affects only the tariff rates of the subtending CLECs engaged in access stimulation, but does not impact the tariff rates of other carriers on the call path, such as Aureon, IXCs, or originating LECs not engaged in access stimulation.

7. CenturyLink Is Not the Competing ILEC (*Designation Order*, ¶ 15)

The Commission directed Aureon to explain its position that CenturyLink is not the competing ILEC "to which Aureon should benchmark its rate."[81] As explained above,[82] CenturyLink is not the "competing ILEC" with respect to Aureon because CenturyLink cannot be the ILEC for the service areas where the end users of Aureon's subtending ILECs reside.[83] It is those subtending ILECs – not CenturyLink – that would have provided switched access service in Aureon's absence.

AT&T asserts that CenturyLink is the competing ILEC on the premise that "CenturyLink is the only carrier in Iowa that has a network that is comparable to Aureon's network in terms of size, complexity, and the volumes of traffic transported."[84] Even so, this has no conclusive bearing on the hypothetical question of which ILEC "would provide interstate exchange access services, in whole or in part, to the extent those services were not provided by the CLEC."[85] If Aureon did not exist, Aureon's subtending ILECs would have provided the equal access and transport service

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[80] *See infra* Section II.A.8.

[81] *Designation Order* at 6,¶ 15.

[82] *See supra* Section II.A.3.

[83] "[T]here is only one 'competing ILEC' . . . for each particular end-user . . . the incumbent LEC in whose service area that particular end-user resides." *CLEC Access Reform Reconsideration Order*, 19 FCC Rcd. at 9131-32, ¶ 45 (footnotes omitted).

[84] AT&T Petition at 7.

[85] 47 C.F.R. § 61.26(a)(2).

themselves or crafted some solution to provide the service. The history behind Aureon's CEA network illustrates this point: Aureon was created by many of the very ILECs that currently subtend its network to provide the CEA service that it does today.[86] Moreover, even if Aureon had not been created, the subtending ILECs could have upgraded their facilities to provide equal access and transport facilities at some point in the last thirty years.[87] Many ILECs subtending Aureon's access tandem have constructed transport facilities that did not exist when Aureon was initially formed,[88] and in Aureon's absence, would have extended the distance of such transport facilities. History also shows that Northwestern Bell Telephone Company's (now CenturyLink) proposal to provide equal access as an alternative to the creation of Aureon was rejected because CenturyLink "lack[ed] the coverage of the [Aureon] plan and [was] not presented as a fully developed alternative."[89]

8. Aureon's Rate Complies with the Benchmark Requirement When Considering the Mileage Used To Reasonably Approximate CenturyLink's Rate (*Designation Order*, ¶ 16)

As an initial matter, Section 61.26(f) states that "the rate for the access services provided may not exceed the rate charged by the *competing ILEC* for *the same access services* . . . ."[90] No

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[86] "The record discloses that Iowa Network Services, Inc., which is jointly owned by the 136 participating ITCs, will operate two divisions." *INS Section 214 Order*, 3 FCC Rcd. at 1469, ¶ 10. Thus, arguably, the subtending ILECs, by virtue of jointly owning Aureon, do in fact provide the services to themselves.

[87] Indeed, even at the time Aureon was authorized, CenturyLink acknowledged that many of the participating ITCs could have upgraded to equal access at reasonable costs. *Id.* at 1470, ¶ 12 ("As a second option, NWB recommends that INAD members convert their end offices to equal access. NWB suggests this conversion could be achieved at 130 of the 306 switches of INAD members at a cost of 10 per subscriber line.").

[88] Hilton Declaration ¶ 3.

[89] *INS Section 214 Order*, 3 FCC Rcd. at 1474, ¶ 38.

[90] 47 C.F.R. § 61.26(f) (emphasis added).

carrier in Iowa provides the exact same access service (i.e., CEA service) as Aureon.[91] Even CenturyLink, which AT&T asserts is "comparable," does not operate switched access transport facilities that connect to the ILEC end offices for most small, independent ILECs in Iowa where Aureon provides CEA service.[92] CenturyLink also does not provide equal access to the exchanges of the subtending ILECs.[93] When Aureon was created, it offered IXCs the option to connect to Aureon's fiber network at most of the cities where they had facilities.[94] Sixteen points of interconnection ("POIs") are listed in Aureon's tariff, which allows IXCs to deliver traffic to any POI that is economically feasible for the IXC to reach.[95] This tariff flexibility allowed IXCs to simplify and consolidate their networks.[96] No other LEC in Iowa is able to offer such flexibility.[97]

To create an economical way to implement the tariff, Aureon built **[[BEGIN CONFIDENTIAL]]** [redacted][98] **[[END CONFIDENTIAL]]** There are **[[BEGIN CONFIDENTIAL]]** [redacted] **[[END**

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[91] Hilton Declaration ¶¶ 2-3.

[92] *Id.*

[93] *Id.*

[94] *Id.* ¶ 3.

[95] *Id.* Until 2012, the only POIs IXCs requested to use were located in: Cedar Rapids, Davenport, Des Moines, Mason City, Omaha, Sioux City, and Spencer. The other POIs were never activated by an IXC request. However, in 2012, Aureon invested in activating the Grinnell POI in order to facilitate rural local exchange carrier ("RLEC") compliance with a requirement that RLECs connect to the closest POI. *Id.* ¶ 7. *See also generally AT&T Corp. v. Alpine Commc'ns, LLC*, Memorandum Opinion and Order, 27 FCC Rcd. 11511 (2012).

[96] Hilton Declaration ¶¶ 3, 8.

[97] *Id.*

[98] *Id.* ¶ 6.

CONFIDENTIAL]] active ring POIs, and all rings intersect at a shared POI in Des Moines, as detailed in the table below.[99]

[[BEGIN CONFIDENTIAL]]

Table B[100]

[[END CONFIDENTIAL]]

Each of the **[[BEGIN CONFIDENTIAL]]** [redacted] **[[END CONFIDENTIAL]]** ring POIs requires an average of **[[BEGIN CONFIDENTIAL]]** [redacted] **[[END CONFIDENTIAL]]** miles of fiber in order to connect back to the shared POI in Des Moines where Aureon's primary tandem is located.[101] For its analysis of a comparable CenturyLink rate, Aureon based its calculation on the air miles distances between POIs contained in the chart below.[102]

[99] As the network, and network volumes have changed over the past decade, sub-rings have been created to address capacity, cost, and design issues. *Id.*

[100] *Id.*

[101] Hilton Declaration ¶ 7.

[102] *Id.* ¶ 11.

Table C[103]

AIR MILES DISTANCE BETWEEN POIs	CEDAR RAPIDS	DAVENPORT	DES MOINES	GRINNELL	MASON CITY	OMAHA	SIOUX CITY	SPENCER
CEDAR RAPIDS	0							
DAVENPORT	64	0						
DES MOINES	104	159	0					
GRINNELL	57	113	49	0				
MASON CITY	114	176	110	99	0			
OMAHA	226	280	122	171	191	0		
SIOUX CITY	246	308	156	196	169	89	0	
SPENCER	196	260	132	157	99	135	78	0
Average of all 36 distances between POIs = 118 mi								
Average of all distances from Des Moines = 104 mi								

The actual average distance of all 36 possible connections between Aureon's eight POIs is 118 miles.[104] The average distance between Aureon's Des Moines tandem switch location to any of the eight active POIs (including zero miles to reach Des Moines) is 104 miles.[105] Aureon used the lower, conservative average as a baseline in choosing 100 miles (a round number to simplify the analysis) in its illustration of a comparable CenturyLink rate. This was done despite the fact that Aureon's tariff provides the flexibility for IXCs to connect to and hand off traffic at any POI – a significant difference between CEA service provided by Aureon and the services provided by other LEC tandem providers – and the Des Moines average does not factor in the additional mileage necessary to first carry traffic from a POI to Aureon's tandem switch before it is carried to another POI connecting to the subtending LEC.[106] In this regard, the higher average distance

[103] *Id.*

[104] 4,256 miles / 36 distances (including zero distances) = 118.

[105] 832 miles / 8 distances (including zero distances) = 104.

[106] Hilton Declaration ¶ 12.

between all active POIs, 118 miles, is a better albeit still potentially under-representative approximation of the average length of transport.[107] Using the actual average of 104 miles, with respect to only Des Moines distances, yields a per MOU rate of $0.005648, as shown in the table below.

Table D[108]

CenturyLink FCC Tariff # 11			
TS Trans Fixed Per MOU	$0.000240		$0.000240
TS Trans Per Mile	$0.000030	x 104 mi	$0.003120
Tandem Switching	$0.002252		$0.002252
Multiplexing	$0.000036		$0.000036
TOTAL PER MOU			**$0.005648**

However, inputting 118 average miles into CenturyLink's tariff rates yields a per MOU rate of $0.006068, as illustrated below.

Table E[109]

CenturyLink FCC Tariff # 11			
TS Trans Fixed Per MOU	$0.000240		$0.000240
TS Trans Per Mile	$0.000030	x 118 mi	$0.003540
Tandem Switching	$0.002252		$0.002252
Multiplexing	$0.000036		$0.000036
TOTAL PER MOU			**$0.006068**

In other words, Aureon's rate of $0.00576 would fall below CenturyLink's rate when using 118 average miles to approximate CenturyLink's rate. In determining the appropriate benchmark, the Commission requires CLEC's to "calculate the rate in a manner that reasonably approximates the

[107] Excluding all zero distance connections results in an average distance of 152 miles. *Id.* ¶ 12, n.4.

[108] Sullivan Declaration ¶ 6.

[109] *Id.* ¶ 7.

competing incumbent LEC rate."[110] Because CenturyLink does not, and cannot, provide the exact same service as Aureon, all of these calculations reasonably approximate what a "comparable" rate would be if calculated using CenturyLink's rates. As a result, the Commission should find that Aureon's rate of $0.00576 is reasonable, even if it must be benchmarked against CenturyLink's rates.

9. Switched Transport Rates of Other ILECs Are Irrelevant (*Designation Order*, ¶ 16)

To the extent that Aureon believes switched transport rates of ILECs, other than CenturyLink, serving the territory in which Aureon's POIs with subtending LECs are located are relevant to its calculation, the FCC directed Aureon to provide the basis for its belief and pertinent data.[111] Aureon does not believe that these rates are relevant because, as discussed above, Aureon's proposed rate would be reasonable even if compared only to CenturyLink's rates, or to a blended average rate that includes NECA's rates and CenturyLink's rates.

B. Aureon's Supporting Information

1. Re-Filing of Cost Support in Native Electronic Format (*Designation Order*, ¶ 17)

Paragraph 17 of the *Designation Order* directed Aureon to file all cost support for Tariff Transmittal No. 36, as filed on February 22, 2018, as a single spreadsheet.[112] A copy of that

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[110] *CLEC Access Reform Reconsideration Order*, 19 FCC Rcd. at 9119, ¶ 21. The Commission *does not*, as AT&T implies by using average miles from CenturyLink's network for its calculations, require CLECs to calculate rates based on the mileage and network configurations of the "competing ILEC." Rather, if CenturyLink's rates were the benchmark, CenturyLink's rates would have to be applied to Aureon's actual transport miles and network configurations. *See* AT&T Petition, Rate Declaration of Daniel P. Rhinehart at 8, ¶ 14 ("[I]t is my understanding based on an analysis of the mileage that would be associated with transporting AT&T's traffic over Century Link's network, that the average mileage per minute would be about 20 miles.").

[111] *Designation Order* at 6, ¶ 16.

[112] *Id.* at 7, ¶ 17.

spreadsheet is attached to the Declaration of Brian Sullivan ("Sullivan Declaration")[113] as Attachment 1. The Commission also directed Aureon to file Annexes 1, 2, and 3 to Exhibit B to Aureon's Reply as a single spreadsheet, and to highlight (with color) each cell that relates to facilities identified as leased facilities. A copy of the consolidated Annexes 1 and 2 (Annex 1-2) with color highlights is attached as Attachment 2 to the Sullivan Declaration. Finally, Annex 3 with color highlights is attached as Attachment 3 to the Sullivan Declaration. Electronic copies of all spreadsheets are being provided directly to staff.

2. Selection of Authorized Rate of Return (*Designation Order*, ¶¶ 18-19)

The Commission noted that in Aureon's tariff Transmittal No. 36, Aureon selected a composite rate of return of 10.625% for tariff years 2017-2018 and 2018-2019, and that Aureon intended to comply with Section 69.3(f)(1) to submit an access tariff filing with an effective date of July 1, 2018.[114] The Commission also granted Aureon a waiver of Section 69.3(f)(1) through July 1, 2019.[115] Aureon confirms that it intends to avail itself of that waiver through July 1, 2019. Further, as directed by the Commission, and as further discussed below, Aureon provides support for a rate-of-return of 10.5%. That rate-of-return does not materially impact the $0.00576 tariff rate submitted in Transmittal No. 36.[116] Therefore, Aureon does not need to submit a tariff pursuant to Section 69.3(f)(1) to reduce its rate to comply with the 10.5% rate-of-return.

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[113] Attached hereto as Exhibit D.

[114] *Designation Order* at 7, ¶ 18.

[115] *Id.* at 8, ¶ 19.

[116] Sullivan Declaration ¶ 9.

3. Calculation of Cable and Wire Facilities Lease Rate (*Designation Order*, ¶ 20)

The Commission directed "Aureon to file more-detailed information . . . regarding how its cable and wire facilities expense, central office equipment expense, and all other expenses that may be based on facilities identified as leased were determined."[117] As the Commission is aware, the *Fifth Report and Order* in the Competitive Common Carrier Services proceeding[118] prohibited Aureon's Access Division from jointly owning the transmission and switching facilities with Aureon's Network Division. The *Fifth Report and Order* required Aureon's Access Division to "have separate books of account, and must not jointly own transmission or switching facilities" with its Network Division.[119] The Commission ordered this corporate arrangement to "protect[] against cost-shifting and anticompetitive conduct . . . . "[120] As required by the *Fifth Report and Order*, Aureon created separate corporate divisions that facilitated access services (i.e., the Access Division), and competitive services (i.e., the Network Division). Aureon's division of its CEA and interexchange services between the Access and Network Divisions, respectively, was approved by the Commission at the time it granted Aureon's Section 214 authorization in 1989.[121]

Section 32.27 of the Commission's rules prescribes the accounting requirements for recording transactions between a regulated carrier and its nonregulated affiliate on the carriers[']" regulated books of account.[122] When Aureon's nonregulated Network Division provides services

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[117] *Designation Order* at 8, ¶ 20.

[118] *Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Therefor*, Fifth Report and Order, 98 F.C.C.2d 1191 (1984) ("*Fifth Report and Order*").

[119] *Id.* at 1198-99, ¶ 9.

[120] *Id.*

[121] *INS Section 214 Order*, 3 FCC Rcd. at 1469, ¶ 10.

[122] 47 C.F.R. § 32.27.

to its regulated Access Division affiliate, the treatment of the cost of those services are governed by Section 32.27(c)(2) because the lease from the Network Division to the Access Division is for service "to a carrier by its affiliate," i.e., to the Access Division by the Network Division. Accordingly, the Network Division's lease rate must be recorded at no more than the lower of fair market value or the Network Division's fully distributed cost. There are no readily available rates for comparable service to develop a fair market value rate because the Network Division does not provide service to third parties to access the more than 2,700 mile CEA fiber network. Given that there is no fair market value for the lease that the Network Division provides to the Access Division, it is necessary to determine whether the Network's Division lease rate to the Access Division is less than the Network Division's fully distributed cost as required by Section 32.27(c)(2).

The affiliate transaction rules only prescribe the manner in which a regulated carrier records on its books of account the charges for assets and services received from a nonregulated affiliate.[123] The rules do not dictate the actual pricing of affiliate transactions.[124] The nonregulated enterprise remains free to charge its affiliated carrier whatever price it wants, including a price in excess of the recording value prescribed by the affiliate transaction rules, provided that the price recorded on the regulated carrier's books complies with those rules.[125]

It is important to note that Aureon's operational expenses ("OPEX") have fallen dramatically over the last several years, and it is important for the Commission's inquiry to focus

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[123] *New York Telephone Co., New England Telephone and Telegraph Co., Apparent Violations of the Commission's Rules and Policies Governing Transactions with Affiliates*, Order to Show Cause and Notice of Apparent Liability for Forfeitures, 5 FCC Rcd. 866, 867, ¶ 10 (1990).

[124] *Id.*

[125] *Id.* at 867-68.

not just on the cable and wire facilities charges, but also the OPEX calculations in order to determine if Aureon's rates are reasonable.[126] Since 2013, Aureon's OPEX expenses have declined by more than $8 million, which is a decrease of 78%.[127] Moreover, Aureon's total revenue requirement, excluding uncollectibles, has been trending consistently downward for many years. The chart below summarizes the foregoing information:[128]

Table F

Year	Revenue Requirement	Cable and Wire Facilities	Opex / Other	YOY Change	Uncollectible Accounts		Revenue Requirement - Excluding Uncollectibles	YOY Change
2018	$ 14,963,150	$ 12,626,315	$ 2,336,836	-56%	$ -		$ 14,963,150	-11%
2016	$ 33,428,638	$ 11,604,439	$ 5,298,869	-33%	$ 16,525,230		$ 16,903,308	-26%
2014	$ 26,211,200	$ 14,817,782	$ 7,938,962	-25%	$ 3,454,456		$ 22,756,744	2%
2013	$ 26,254,447	$ 11,669,499	$ 10,623,940		$ 3,961,008		$ 22,293,439	
2012	$ 20,805,902	$ 9,754,000	$ 8,566,475		$ 2,485,427		$ 18,320,475	
2010	$ 28,671,481	$ 14,478,572	$ 11,299,334		$ 2,893,575		$ 25,777,906	

The Network Division's lease amount and lease rate were presented in Annex 3 to Exhibit B to Aureon's Reply. In order to provide additional information and clarity regarding the information contained in Annex 3, Aureon resubmits Annex 3 with all necessary documentation in a single spreadsheet,[129] with appropriate explanations and clarifications as set forth below. The Summary worksheet aggregates all of the data in the supporting worksheets to perform the necessary calculations to compute the lease amount and lease rate for the nonregulated service that the Network Division provides to the Access Division. Specific details regarding the Summary

[126] Declaration of Jeff Schill ¶ 3 ("Schill Declaration"), attached hereto as Exhibit B.

[127] *Id.*

[128] This information is available from Aureon's cost studies previously filed with the Commission.

[129] Section V.B. of the *Designation Order* sets forth the requirements for the spreadsheets filed by Aureon. Although each Excel file is comprised of many different worksheets, or "tabs," all formulas, references, and calculations were included, including those based on entries in different worksheets (tabs) within the same workbook file.

Worksheet calculations are shown below, and a more general discussion of the calculations and input sources can be found in the response to Paragraph 24.

4. Discussion of the Annex 3 Summary Worksheet (*Designation Order*, ¶ 21)

[[BEGIN CONFIDENTIAL]] [redacted]

[redacted]

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[130] Sullivan Declaration ¶ 13. Further information regarding the total gross potential lease for all facilities is discussed *infra* Section II.B.5.

[131] Sullivan Declaration ¶ 13.

[132] *Id.* ¶ 14.

[133] *Id.*

[134] CEA Service is actually provisioned on a DS-1 circuit level, and trunks coming out of Aureon's switch are at the DS-0 level. Hilton Declaration ¶ 14.

[135] Sullivan Declaration ¶ 14.

[redacted]

[136] *Id.* ¶ 15.

[137] *Id.*

[138] *Id.*

[139] *Id.*

[140] *Id.*

[141] Sullivan Declaration ¶ 15.

[142] *Id.* ¶ 16.

[redacted]

[143] *Id.*

[144] *Id.*

[145] *Id.*

[146] Sullivan Declaration ¶ 16.

[147] *Id.* ¶ 17.

[148] *Id.*

[149] *Id.*

[redacted]

[150] *Id.*

[151] Sullivan Declaration ¶ 17.

[152] *Id.*

[153] *Id.* ¶ 18.

[154] *Id.* **[[BEGIN CONFIDENTIAL]]** [redacted]

[redacted] [[END CONFIDENTIAL]]

5. Nature of Costs Represented by the Lease (*Designation Order*, ¶¶ 21-23)

Response to Paragraph 21: In Annex 3 previously filed with the Commission, the starting point for the development of the lease rate of DS-1 facilities provided by the Network Division to the Access Division on a DS-0 circuit miles basis were two values labeled **[[BEGIN CONFIDENTIAL]]** [redacted][159] **[[END CONFIDENTIAL]]** That label, however, is a misnomer as the Network Division is an unregulated entity that is not subject to rate-of-return regulation.[160] Therefore, the Network Division does not have a revenue requirement. Furthermore, **[[BEGIN CONFIDENTIAL]]** [redacted]

[redacted] **[[END CONFIDENTIAL]]** *See* Hilton Declaration ¶¶ 21-23.

[155] Sullivan Declaration ¶ 18.

[156] *Id.*

[157] *Id.* ¶ 19.

[158] *Id.* (citing *Id.* at Attachment 1).

[159] Sullivan Declaration ¶ 11.

[160] *Id.*

[redacted]

[[END CONFIDENTIAL]] The relevant excerpt from Aureon's June 2016 tariff filing is shown below:[165]

IOWA NETWORK SERVICES, INC. | COST SUPPORT MATERIAL | SECTION 5
FILING PERIOD: 7/1/16 - 6/30/17 | PART 64 SEPARATIONS | 6/10/2016

S-8,1of1 | SUMMARY OF OPERATING EXPENSE AND TAX | S-8,1of1

LN	DESCRIPTION	A/C	NOTE	TOTAL COMPANY	ALLOCATION BASIS	ACCESS DIVISION	OTHER
	OPERATING EXPENSE AND TAX SUMMARY						
1	NETWORK SUPPORT EXPENSE	6110		324,745	S-9,LN 13-23	9,162	315,583
2	GENERAL SUPPORT EXPENSE	6120		1,357,545	S-9,LN 24-27	64,107	1,293,438
3	CENTRAL OFFICE EXPENSE	6210		3,139,573	S-9,LN 33	345,168	2,794,406
4	CABLE AND WIRE FACILITIES EXPENSE	6410		17,861,701	S-9,LN 35	12,840,050	5,021,651
5	OTHER PLANT EXPENSE	6510		19,040,771	S-10,LN 6	4,361	19,036,410
6	NETWORK OPERATIONS EXPENSE	6530		6,700,630	S-10,LN 13	238,188	6,462,442

Response to Paragraph 22: In this paragraph, the Commission directed Aureon to provide any correction to the heading immediately preceding the presentation of the two revenue

[161] Sullivan Declaration ¶ 11.

[162] *Id.*

[163] *Id.*

[164] *Id.*

[165] *Id.*

requirements, and to explain how the time period was selected.[166] As discussed above in Aureon's response to Paragraph 21, the heading has been revised. With respect to how Aureon selected the particular period of time described by the corrected text, the period of time was selected for two reasons.[167] **[[BEGIN CONFIDENTIAL]]** [redacted] **[[END CONFIDENTIAL]]** Second, there is no other readily available method to determine a lease rate. Section 32.27(c)(2) provides that the lease rate may be recorded at no greater than the fair market value for the service or at the service's fully distributed cost.[170] There is no method to determine the fair market value for the lease rate as the Network Division does not provide service to third parties to access the more than 2,700 mile CEA fiber network, and there are no lease rates for comparable networks available, assuming that such information could even be obtained from other carriers for nonregulated services in the first instance.[171] Therefore, the only other alternative is to use the cost of those facilities as recorded on Aureon's books of account to calculate the lease rate charged to the Access Division by the Network Division.[172]

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[166] *Designation Order* at 8, ¶ 22.

[167] Sullivan Declaration ¶ 12.

[168] *Id.*

[169] *Id.*

[170] *Id.*

[171] *Id.*

[172] *Id.*

Response to Paragraph 23: In this paragraph, the Commission directed Aureon to provide a spreadsheet demonstrating how each of the two revenue requirements in Annex 3 were calculated, and to provide additional specific information related to, among other things, the assets, costs, expenses, investments, and taxes used to calculate the revenue requirements.[173] As explained above in Aureon's response to Paragraph 21, **[[BEGIN CONFIDENTIAL]]** [redacted] **[[END CONFIDENTIAL]]**

It is important to note that the lease only represents the direct cost of transport of CEA service in the revenue requirement development for the Access Division.[176] The Part 64 allocations set forth in Section 5 of Attachment 1 to the Sullivan Declaration, which were included in Aureon's Transmittal No. 36 submission, assign the actual CWF, the actual OPEX and depreciation expenses, along with relative overhead costs, to non-CEA services.[177] The costs of switching are not included in the lease rate.[178] Further support regarding the reasonableness of using the **[[BEGIN CONFIDENTIAL]]** [redacted] **[[END CONFIDENTIAL]]** as

[173] *Id.* at 8-9, ¶ 23.

[174] Sullivan Declaration ¶ 11.

[175] *Id.*

[176] *Id.* ¶ 20.

[177] *Id.*

[178] *Id.*

inputs in computing the lease rate is found in the alternative to the calculations of the Access Division's revenue requirement, submitted as Annex 2 to Aureon's Reply.[179] As further discussed below in Aureon's response to Paragraph 28, the calculations in Annex 2 **[[BEGIN CONFIDENTIAL]]** [redacted] **[[END CONFIDENTIAL]]** which confirms that Aureon complied with the Section 32.27(c)(2) requirement to reflect the cost of the nonregulated service provided by the Network Division to the Access Division at no higher than fully distributed cost.[181] **[[BEGIN CONFIDENTIAL]]** [redacted] **[[END CONFIDENTIAL]]** Aureon submits that no additional information is necessary to respond to Paragraph 23.[182]

6. Allocation of Costs to the CEA Network (*Designation Order*, ¶¶ 24-27)

Response to Paragraph 24: In this paragraph, the FCC states that the methodology in Annex 3 appears to assume that **[[BEGIN CONFIDENTIAL]]** [redacted]

[179] Sullivan Declaration ¶ 20.

[180] *Id.* ¶ 21.

[181] *Id.*

[182] *Id.* ¶ 22.

[redacted]

[183] Hilton Declaration ¶ 13.

[184] *Id.*

[185] *Id.*

[186] *Id.* ¶ 14.

[187] *Id.*

[188] Hilton Declaration ¶ 14.

[189] *Id.*

[190] *Id.*

[redacted]

[redacted]

[redacted]

191 Hilton Declaration ¶ 14.

192 *Id.*

193 *Id.* ¶ 15.

194 *Id.*

195 *Id.*

196 *Id.*

[redacted]

[redacted]

[197] Hilton Declaration ¶ 16.

[198] *Id.*

[199] *Id.*

[200] *Id.*

[201] *Id.*

[redacted]

[202] Hilton Declaration at ¶ 17 (citing Sullivan Declaration at Attachment 3).

[203] Sullivan Declaration ¶ 17.

[204] *Id.* at Attachment 3.

[205] *Id.*

[206] *Id.* ¶ 15.

[207] *Id.*

[208] *Id.*

[redacted]

[209] Sullivan Declaration ¶ 16.

[210] *Id.*

[211] *Id.*

[212] *Id.*

[213] *Id.*

[214] Sullivan Declaration at Attachment 3.

[215] *Id.* ¶ 16.

[216] *Id.* at Attachment 3.

[217] *Id.* ¶ 17.

[218] *Id.*

[[END CONFIDENTIAL]]

[219] Sullivan Declaration ¶ 17.

[220] *Id.* ¶ 18.

[221] *Id.*

[222] *Id.* ¶ 23. *See also* Attachment 4.

[223] Sullivan Declaration ¶ 23. *See also* Attachment 2.

[224] *Id.* at Attachment 2.

[225] *Id.*

[226] *Id.* ¶ 23.

Response to Paragraph 25: The FCC directed Aureon to provide documentation for each of the entries labeled "Circuit Cost" under "Central Office Equipment" in Annex 3, to provide the underlying documentation and detail regarding how those were developed, and to submit that information in spreadsheets.[227] As discussed above, **[[BEGIN CONFIDENTIAL]]** [redacted] **[[END CONFIDENTIAL]]**

Response to Paragraph 26: The Commission directed Aureon to explain the columns labeled "Avg Miles Per Cct" and "Circuit Miles" under the heading "Cable and Wire Facilities," **[[BEGIN CONFIDENTIAL]]** [redacted]

[227] *Designation Order* at 9, ¶ 25.

[228] Sullivan Declaration at Attachment 2.

[229] *Id.*

[230] *Id.*

[231] *Id.*

[232] *Id.*

[233] *Designation Order* at 9, ¶ 26.

[redacted]

[234] Sullivan Declaration at Attachment 3.

[235] *Id.*

[236] *Id.*

[237] *Id..*

[238] *Id.*

[239] *Id.*

[240] Hilton Declaration ¶ 20.

[241] *Id.*

[242] *Id.*

[redacted] **[[END CONFIDENTIAL]]**

Response to Paragraph 27: With respect to Aureon's $13,430,525 CWF Facility Lease expense, and whether that amount includes any expense related to spare capacity assigned to the Network Division, the CWF Facility Lease does include spare capacity, which is allocated among the Network Division and the Access Division on a relative basis.[246] **[[BEGIN CONFIDENTIAL]]** [redacted] **[[END CONFIDENTIAL]]** This type of allocation is consistent with processes used by rural LECs in toll cost studies for purposes of Parts 36 and 69 of the Commission's rules.[250]

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[243] Sullivan Declaration ¶ 19.

[244] *Id.*

[245] *Id.*

[246] *Id.*

[247] *Id.*

[248] Sullivan Declaration ¶ 19.

[249] *Id.*

[250] *Id.*

7. Alternative to Lease Calculation (*Designation Order*, ¶ 28)

Response to Paragraph 28: The Commission "direct[ed] Aureon to file further information regarding the alternative calculations of its revenue requirement."[251] The alternative revenue requirement calculation does not include the "lease" developed and described above. **[[BEGIN CONFIDENTIAL]]** [redacted] **[[END CONFIDENTIAL]]** A complete spreadsheet file for Annexes 1 and 2, combined in a single spreadsheet, has now been provided with this submission as "Annex 1-2."[255] The Annex 1-2 spreadsheet contains the source, data, accounting methods and rules, and assumptions for the development of each Part 64, 36, and 69 cost allocation and the cost projections for the facilities reflected in the revenue requirement calculations.[256]

[[BEGIN CONFIDENTIAL]] [redacted]

[251] *Designation Order* at 10, ¶ 28.

[252] Sullivan Declaration ¶ 23.

[253] *Id.*

[254] *Id.*

[255] *Id.* (citing *Id.* at Attachment 2).

[256] *Id.* (citing *Id.* at Attachment 2).

[257] *Id.* ¶ 24.

[redacted]

[258] Sullivan Declaration ¶ 24.

[259] *Id.*

[260] *Id.*

[261] *Id.*

[262] *Id.*

[263] Sullivan Declaration ¶ 25.

[264] *Id.*

[265] *Id.*

[redacted]

[266] *Id.*

[267] *Id.* ¶ 26.

[268] Sullivan Declaration ¶ 27.

[269] *Id.*

[redacted] [[END CONFIDENTIAL]]

C. Sufficiency of Demand Support (*Designation Order*, ¶¶ 29-31)

In Section III.C of the *Designation Order*, the Commission directed Aureon to justify the demand forecast reflected in its revised rate, and to demonstrate that its forecast is based on accurate and reliable data and that a credible forecasting method was used.[271] Aureon provides the following information in response thereto:

Response to Paragraph 30: The Commission states that it is unable to replicate the Excel trend analysis based on the data Aureon provided, and that Aureon has not justified use of a single year of historical data to forecast demand.[272] Accordingly, the FCC directed Aureon to provide actual, historic interstate and intrastate monthly traffic volumes separately, expressed as minutes-of-use ("MOUs"), for the time period beginning (and including) January 2015 to the most recent month for which such actual demand data are available, and to provide that information in spreadsheets.[273] The information requested is attached hereto as Attachment 1 to the Schill Declaration.

The data submitted indicates that demand has, in fact, fallen during recent months.[274] [[BEGIN CONFIDENTIAL]] [redacted]

[270] *Id.*

[271] *Designation Order* at 10, ¶ 29.

[272] *Id.* at 10-11, ¶ 30.

[273] *Id.*

[274] Schill Declaration ¶ 5.

[275] *Id.* (citing *Id.* at Attachment 1).

[redacted]

[redacted]

[[END CONFIDENTIAL]]

[276] *Id.* (citing *Id.* at Attachment 1).

[277] *Id.* (citing *Id.* at Attachment 1).

[278] *Id.* (citing *Id.* at Attachment 1).

Response to Paragraph 31: AT&T asserted in its petition to investigate Aureon's tariff that AT&T's traffic on the CEA network has steadily grown, whereas Aureon stated that volumes are decreasing. In light of the conflicting statements, the FCC has directed Aureon to provide a comparison of past demand forecasts with actual demand for the applicable tariff periods to determine the accuracy of Aureon's past forecasts.[279] Specifically, the FCC has directed Aureon to provide an explanation of why it believes traffic volumes are declining, as well as the monthly MOU traffic forecasts submitted as part of its 2010, 2012, 2013, 2014, and 2016 annual filings.[280] The FCC also directed Aureon to submit the actual, historical monthly interstate MOU traffic for the applicable tariff periods, i.e., the months during which these forecasts were reflected in the then-applicable switched transport rates.[281] Aureon submits the requested information in a single spreadsheet, which is attached hereto as Attachment 2 to the Schill Declaration.

AT&T's MOUs are only one component of Aureon's total projected MOUs, and the MOUs of other carriers that use CEA service must also be included to develop accurate CEA traffic forecasts.[282] **[[BEGIN CONFIDENTIAL]]** [redacted]

[279] *Designation Order* at 11, ¶ 31.

[280] *Id.*

[281] *Id.*

[282] Schill Declaration ¶ 7.

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[283] Schill Declaration ¶ 9 (citing *Id.* at Attachment 2).

[redacted]

[[END CONFIDENTIAL]] Should the traffic trend change, Aureon will submit a revised tariff filing that accounts for the alteration in traffic volumes.

D. Relationship between the Benchmark Rate and Cost Support Submitted by Aureon (*Designation Order*, ¶ 32)

In Paragraph 32 of the *Designation Order*, the Bureau asks a series of questions regarding the relationship between the CLEC rate benchmark and the cost-supported rate.[288] Each of these questions are answered in turn below.

1. Should Cost Support Information Be Considered once the FCC Identifies the Competing ILEC?

Like all other LECs that bill their default transitional rates without cost support, the Commission should allow Aureon to bill a CEA tariff rate that is equal to or less than Aureon' s

[284] *Id.*

[285] *Id.*

[286] *Id.*

[287] *Id.*

[288] *See Designation Order* at 11, ¶ 32.

default transitional rate of $0.00819.[289] The $0.00819 default transitional rate applies "notwithstanding" the CLEC rate benchmark.[290]

Aureon should only be subject to the default transitional rate *without* either a CLEC rate benchmark or a cost support requirement for the four following reasons. First, the rate ceiling established by the default transitional rate ($0.00819) would serve no purpose if the CLEC rate benchmark (either the NECA rate or the Century Link rate) is also imposed as a rate ceiling on Aureon.[291] Second, the CLEC rate benchmark is inapplicable to CEA service as that benchmark assumes that Aureon provides CEA service to end users in competition with a competing ILEC. However, as explained above, Aureon does *not* provide its CEA service to end users.[292] Third, other CLECs are *not* required to submit cost studies as the purpose of the CLEC rate benchmark is to avoid cost-based factors in determining just and reasonable rates.[293] Nevertheless, as a dominant carrier, Aureon is required to submit cost studies supporting its rates.[294] Finally, the

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[289] *See id.* at 2, ¶ 2.

[290] *Liability Order*, 32 FCC Rcd. at 9677, ¶ 26 (quoting Section 51.905, the default transitional rate applies "notwithstanding any other provision of the Commission's rules" and "regardless of how a CLEC calculates its rates").

[291] *See Liability Order*, 32 FCC Rcd. at 9688, ¶ 23 ("Rule 51.905(b) caps interstate 'tariff rates [at] no higher than the default transitional rate' . . . ." (quoting 47 C.F.R. § 51.905(b)); *Technology Transitions,* 31 FCC Rcd. at 8292, ¶ 27 (default transitional rate already "prevents . . . LECs from charging IXCs excessive rates for switched access").

[292] *See supra* Section II.A.2.

[293] *See Petition of Westelcom Network, Inc. for Limited, Expedited Waiver of Section 61.26(a)(6) of the Commission's Rules,* Order, 32 FCC Rcd. 3693, 3694, ¶¶ 3-4 (2017) ("Rather than regulating the costs or revenues of [CLECs], the [FCC] established market-based safe harbor benchmarks above which [CLECs] are prohibited from tariffing . . . ." (citing *CLEC Access Charge Reform Order*, 16 FCC Rcd. at 9925, ¶ 3)); *Connect America Order*, 26 FCC Rcd. at 17966, ¶ 866 ("The benchmarking rule was designed as a tool to constrain [CLECs'] access rates to just and reasonable levels without the need for . . . evaluation of [CLECs'] costs.").

[294] *Liability Order*, 32 FCC Rcd. at 9690, ¶ 26 ("[A] dominant carrier such as Aureon must . . . supply 'supporting . . . material' justifying its rates." (quoting 47 C.F.R. § 61.38)).

CLEC benchmark rate cannot lawfully reduce Aureon's rate below the just and reasonable level established by cost studies that fully comply with the FCC's accounting rules and maximum authorized rate of return.[295]

In light of these reasons, so long as Aureon's tariff rate is less than or equal to the default transitional rate of $0.00819, Aureon should be treated like all other LECs that are not required to recalculate rates based on changes to their revenue requirements. The purpose of the default transitional rate is "to provide more certainty and predictability regarding revenues to enable carriers to invest in modern, IP networks."[296] The Commission required tariffs to contain the default transitional rates, while permitting carriers "to enter into negotiated agreements that differ from the default rates."[297] To provide "carriers with the benefit of any cost savings and efficiencies they can achieve," LECs are no longer required to recalculate their rates based on their revenue requirements and rate of return, but now can charge the default transitional rates and "retain revenues even if their switched access costs decline."[298]

Like all other LECs, Aureon needs predictable revenue recovery to ensure that Aureon can maintain and enhance its network, and to provide rural broadband service in Iowa. So long as Aureon bills a CEA tariff rate that is less than or equal to the default transitional rate of $0.00819, Aureon should *not* be required to reduce its rates further based on cost studies or a CLEC rate benchmark, but should be permitted to receive the benefit of the cost savings and efficiencies it can achieve. Ultimately, the FCC should find that the CLEC rate benchmark is incompatible with the rate of return regulation and default transitional rate applicable to Aureon. Therefore, the

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[295] *See supra* Section I.

[296] *Connect America Order*, 26 FCC Rcd. at 17669, ¶ 9.

[297] *Id.* at 17939, ¶ 812, and 17945-46, ¶ 828.

[298] *Id.* at 17957-58, ¶ 851, and 17983-84, ¶ 900.

Commission should *only* subject Aureon to the rate cap incentive regulation established by the $0.00819 default transitional rate – *without* consideration of a CLEC rate benchmark or cost support.

2. If Cost Support Should Be Considered, How Would Cost Support Impact the Benchmark Rate?

If the Commission prefers not to treat Aureon's $0.00819 default transitional rate (like all other LECs) as a form of rate cap incentive regulation, the FCC should then allow Aureon to charge a cost-supported rate that satisfies the "end result standard" promulgated by the D.C. Circuit in *Jersey Central Power & Light Co.*[299] Aureon must be permitted to charge its cost-supported rate regardless of the CLEC rate benchmark. Pursuant to the "end result standard," a rate is just and reasonable if it "may reasonably be expected to maintain financial integrity, attract necessary capital, and fairly compensate investors for the risks they have assumed . . . ."[300] Whether a rate is just and reasonable may be determined "on the basis of cost."[301] Specifically, "to the extent practical, telephone prices 'should be based upon the true cost characteristics of telephone company plant.'"[302]

Additionally, "the Commission must factor overriding equitable considerations"[303] in considering the lawfulness of Aureon's rate. Consequently, the Commission should determine whether Aureon's $0.00576 tariff rate provides sufficient revenue if AT&T continues *not* to pay Aureon's tariff rates. Such an examination would require the FCC to consider both Aureon's cost

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[299] *Jersey Cent. Power & Light Co.*, 810 F.2d at 1177.

[300] *Id.*

[301] *MCI Telecomm. Corp.*, 675 F.2d at 410.

[302] *Nat'l Ass'n of Regulatory Util. Comm'rs*, 737 F.2d at 1147 (quoting *MTS and WATS Market Structure*, 93 F.C.C.2d at 251).

[303] *Virgin Islands Tel. Corp.*, 989 F.2d at 1240.

studies and AT&T's debt to Aureon of more than $70 million (not including late penalties) resulting from AT&T's underpayment of Aureon's invoices since September 2013.[304] An examination of both cost studies and equitable factors would ensure that the Commission prescribes a just and reasonable rate for Aureon – irrespective of any CLEC rate benchmark.

3. If Cost Support Confirms a Lower Rate than the Benchmark Rate, Would the Applicable Rate be the Cost Supported Rate Instead of the Benchmark Rate?

For the reasons discussed above, the Commission should not apply the CLEC rate benchmark to CEA service, and if necessary, it should waive Rules 51.911(c) and 61.26, as the CLEC rate benchmark is incompatible with rate of return, cost based regulation, and the rate ceiling already established by the default transitional rate. However, should the Commission decide to apply the CLEC rate benchmark to CEA service, then it should only do so as a rate floor. When the Commission established rate benchmarking for CLECs, it stated that a CLEC's access rates would be conclusively presumed to be just and reasonable if the rates were at or below the benchmark.[305] There would be no need for Aureon to perform cost studies to support its rates at or below the CLEC rate benchmark because CLEC rates at or below that level are, by Commission rule, "conclusively" presumed to be just and reasonable.

4. Would There Be any Situation Where the Cost Support Could Justify a Rate Higher than the Applicable Benchmark Rate?

The Commission must permit Aureon to charge a cost-supported tariff rate above the CLEC rate benchmark if the tariff rate has been calculated in compliance with the Commission's accounting regulations and the rate of return authorized by the Commission. Such a tariff rate is just and reasonable, and therefore, lawful. Imposing a CLEC rate benchmark that would require

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[304] *See supra* Section I.

[305] *CLEC Access Reform Order*, 16 FCC Rcd. at 9938 ¶ 40.

Aureon to charge less than the reasonable, cost supported rate would mandate an unjust and unreasonable rate, contrary to the Commission's ratemaking regulations in Parts 32, 36, 64, 65, and 69, and in violation of Sections 201(b), 204(a)(l), and 205(a) of the Communications Act. Regardless of the CLEC rate benchmark, a rate is not just and reasonable unless the rate is "sufficient to assure confidence in the financial integrity of the enterprise, so as to maintain its credit and to attract capital," provide sufficient "revenue not only for operating expenses but also for the capital costs of the business," and include revenue for "service on the debt and dividends on the stock."[306] Therefore, a rate higher than the CLEC rate benchmark is justified if cost studies demonstrate that such a rate is just and reasonable, and, therefore, lawful.

Alternatively, in order to reduce the burden on the Commission associated with reviewing Aureon's cost studies, a rate set by Aureon between the CLEC rate benchmark (the price floor) and the $0.00819 default transitional rate (price ceiling) could be considered by the Commission as a rate within a "zone of reasonableness" that is presumptively reasonable without the need for Aureon to file cost studies with the Commission. Allowing Aureon to set a rate between such a price "floor" and price "ceiling" would regulate Aureon's rates like other LECs, where the focus is now on prices rather than cost studies, consistent with general price cap regulation principles.[307]

III. CONCLUSION

The Commission determined in the *Liability Order* that pursuant to Section 51.903(a), Aureon was a CLEC under the Commission's non-dominant carrier rules. Consistent with that determination, the Commission should permit Aureon to bill tariff rates equal to or less than its

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[306] *Jersey Cent. Power & Light Co.*, 810 F.2d at 1176.

[307] *See Policy and Rules Concerning Rates for Dominant Carriers*, Second Report and Order, 5 FCC Rcd. 6786, 67876-89, ¶¶ 3, 5-20 (1990) (stating that price cap regulation requires the FCC to set a rate within a "zone of reasonableness" by focusing on prices rather than costs or earnings).

default transitional rate of $0.00819 because that rate already "prevents . . . LECs from charging IXCs excessive rates for switched access."[308] Alternatively, should the Commission decide to preclude Aureon from charging its default transitional rate as described in the *Connect America Order*, the Commission should allow Aureon to charge a cost-supported rate sufficient to assure the financial integrity of CEA service, including providing sufficient revenue to maintain Aureon's credit and to attract capital, not only for operating expenses, but also for the capital costs of the business.

Because Aureon's tariff rate of $0.00576 is supported by accurate cost and traffic studies, the Commission should find that tariff rate to be just and reasonable, and therefore, lawful. Furthermore, the Commission should find that the CLEC rate benchmark is incompatible with rate-of-return regulation and the default transitional rate applicable to calculating Aureon's tariff rates, and if necessary, waive the application of Sections 51.911(c) and 61.26 of the Commission's rules to CEA service. Should the Commission decide to apply the CLEC rate benchmark to CEA service, then it should only do so as a rate floor, which is conclusively presumed to be just and reasonable.

[308] *Technology Transitions*, 31 FCC Rcd. at 8292, ¶ 27.

Respectfully submitted,

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Dated: May 3, 2018

REDACTED – FOR PUBLIC INSPECTION

Exhibit A

Declaration of Frank Hilton

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Exhibit B

Declaration of Jeff Schill

REDACTED – FOR PUBLIC INSPECTION

Exhibit C

Aureon-Member Carrier Census

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Exhibit D

Declaration of Brian Sullivan

REDACTED – FOR PUBLIC INSPECTION

CERTIFICATE OF SERVICE

I, Tony S. Lee, hereby certify that on this 3rd day of May 2018, copies of the foregoing document were sent to the following:

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